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Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1994

KEVIN BLAKE, SEAN BROGAN, MARY KELLIHER, JOHN D. McCARTHY AND MORTIMER O'SHEA,
Petitioners,

v.

PLANNED PARENTHOOD LEAGUE OF MASSACHUSETTS, INC., COMMONWEALTH OF MASSACHUSETTS, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. In this action brought under the Massachusetts Civil Rights Act, in which the Respondents had to prove that the Petitioners, nonviolent demonstrators, threatened, intimidated or coerced women seeking abortions, did the Court violate Petitioners' due process rights by elevating clinic patients' rights to privacy above Petitioners' rights to a fair trial and ruling that Petitioners could not learn the identity, or ask questions in discovery or at trial, of the women whom they allegedly threatened, intimidated or coerced?

2. Does an injunction barring the Petitioners from "trespassing on, blocking or in any way obstructing access" to abortion facilities impinge on protected First Amendment activity because it is overbroad and vague and will chill expression of opposition to abortion at abortion clinics?

PARTIES TO THE PROCEEDINGS

In addition to the Petitioners listed in the caption, Operation Rescue: Boston, Pro-Life Action Network of Arlington, Barbara Bell, Timothy Biggins, Timothy Brigham, Rachel Cann, Shirley Clifton, Sean Corrigan, William Cotter, Claire Croghan, Robert Delery, Denise Duda, James Dudley, Robert Filos, Darroline Firlit, Francis Haggerty, Bruce Hendon, Lawrence Howe, Michelle LaPlume, Joseph Manning, Peter Marleau, Jean Marshall, Richard McCarthy, Anne McNamara, Bruce Murch, Adeline Murray, James Myette, Andrew Olsson, Brian Phaneau, Fred Pulsifer, Philip St. Jean, Russell Saulnier, Andrew Singer, Jr., Robert Souza and Catherine Wommack were defendants in the Superior Court of Massachusetts, Middlesex County and had judgment entered against them, but did not appeal. None of the Petitioners are active corporations.

In addition to the Respondents listed in the caption, Preterm, Inc., Repro Associates, Inc., Crittenton Hastings House, Stanton P. Goldstein, M.D., and Rebecca Roe were plaintiffs in the Superior Court of Massachusetts and had judgment entered in their favor. The Supreme Judicial Court reversed and vacated the trial court's decision in favor of Rebecca Roe and dismissed the action as to her. Barry Adler, d/b/a Gynecare, was a plaintiff in the Superior Court and had judgment entered in his favor, but did not appear or argue in the Supreme Judicial Court. League of Women Voters of Massachusetts, Massachusetts National Organization for Women, Mass. Choice, and Religious Coalition for Abortion Rights were plaintiffs in the Superior Court and had judgment entered against them, but did not appeal.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

Kevin Blake, Sean Brogan, Mary Kelliher, John D. McCarthy and Mortimer O'Shea respectfully petition for a writ of certiorari to review the judgment of the Supreme Judicial Court of Massachusetts, entered in that court on May 13, 1994.

OPINIONS BELOW

The opinion of the Supreme Judicial Court of Massachusetts is reported at 417 Mass. 467 (1994) and is reproduced herein as Appendix A.

The Amended Judgment of the trial judge of the Superior Court of Massachusetts, Middlesex County, was not reported, but is reproduced herein as Appendix B. The resulting Amended Permanent Injunction was not reported, but is reproduced herein as Appendix C.

STATEMENT OF JURISDICTION

Trial judge Peter Lauriat of Middlesex Superior Court entered an Amended Judgment on October 28, 1991, holding that certain defendants, including Petitioners, had violated MCRA. The trial judge then entered an Amended Permanent Injunction on October 28, 1991, barring those defendants from, *inter alia*, obstructing access to any abortion facility in Massachusetts. Thereafter, on May 13, 1994, the opinion of the Supreme Judicial Court of Massachusetts was entered upholding the injunction. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

This case involves the Fourteenth Amendment to the United States Constitution, which provides, in pertinent part: "No

State shall . . . deprive any person of life, liberty, or property, without due process of law. . . ."

This case also involves the First Amendment to the United States Constitution (incorporated by the Fourteenth Amendment to apply to states as well), which provides, in pertinent part: "Congress shall make no law . . . abridging the freedom of speech. . . ."

In addition, this case involves the Massachusetts Civil Rights Act ("MCRA"), G.L. c. 12, §§ 11H-11I, which, in pertinent part, prohibits:

> any person or persons . . . [from] interfer[ing] by threats, intimidation or coercion, or attempt[ing] to interfere by threats, intimidation or coercion, with the exercise or enjoyment by any other person or persons of rights secured by the constitution or laws of the United States. . . .

STATEMENT OF THE CASE

This case challenges the constitutionality of the denial of the Petitioners' efforts to learn the identities of and to question during discovery and at trial those women whose civil rights they allegedly violated.

This case was commenced on April 10, 1989, by ten plaintiffs, including Massachusetts clinics which provide abortion services; membership organizations; a doctor who claims to provide abortion services; and a Rebecca Roe, identified as a fictitious person representative of all women seeking abortions at plaintiff clinics. Their Complaint named 79 defendants, including individuals and organizations. Approximately one year later, the Commonwealth of Massachusetts intervened as a plaintiff as well. The plaintiffs and plaintiff-intervenor filed a

Joint Amended Complaint on October 15, 1990, alleging a single count against 87 defendants, including the Petitioners: that they had violated MCRA by sitting in front of or inside certain abortion clinics on certain dates, thereby delaying or preventing abortion services for women seeking abortions on such dates at those clinics. The Joint Amended Complaint alleged that the defendants' actions interfered with women's constitutional right to abortion services by means of threats, intimidation or coercion.

During discovery, the defendants, in order to learn relevant facts to defend against plaintiffs' claim, sought the identities of those individuals whom the defendants had allegedly threatened, intimidated or coerced. The defendants propounded interrogatories to all plaintiffs which specifically asked plaintiffs to identify the women who were threatened, intimidated or coerced by the defendants, *i.e.*, those who were prevented from receiving abortion services. Document requests were also served on the clinics asking for documents which identified the women scheduled for appointments on days of rescues.

Plaintiffs refused to provide this information, arguing, *inter alia*, that the information sought was confidential. On August 17, 1990, the defendants filed a motion to compel responses to these requests. Rather than compelling plaintiffs to provide the information under a protective order keeping the women's identities confidential, the Middlesex Superior Court judge denied defendants' motion to compel. Defendants appealed to the Single Justice of the Appeals Court, who denied relief and refused to report her decision to the Full Bench. A further petition to the Single Justice of the Supreme Judicial Court of Massachusetts was also denied.

As trial approached, defendants made further attempts to find out whose civil rights they had violated. The defendants issued subpoenae to clinics asking that the clinics produce records identifying the individuals who were prevented by the

defendants from receiving abortion services. Plaintiffs moved to quash the subpoenae. The trial judge granted this motion.

Despite their inability to find out the identities of women who allegedly had their civil rights violated, defendants sought means to depose these women even without their names. The trial court entered a protective order which would have allowed defendants to depose only those women, hand-picked by plaintiffs, who would testify at trial, but preventing the defendants from learning any identifying information such as name, address, and the like. The only woman who was going to testify refused to appear at her deposition and did not testify at trial. Defendants thus were unable to depose any women with whose rights they allegedly interfered.

In short, the defendants made every effort to seek discovery prior to trial of and from key witnesses in this action — women who allegedly were threatened, intimidated or coerced by the defendants' actions. As the parties stipulated in their Joint Pe-Trial Memorandum:

> g. Defendants in discovery have sought the identities of women who were scheduled to receive services at the clinics on the days in question and plaintiffs have declined to produce them.
>
> h. One Jane Doe, who was identified by plaintiffs as a woman who was allegedly seeking abortion services at incident (1), and who had earlier agreed to testify pursuant to protective order, declined to appear at deposition and will not testify at trial. Defendants had no opportunity to take discovery against Jane Doe.

At trial, defendants continued to seek identities of people whose civil rights were allegedly violated. For each incident

about which testimony was offered, defendants asked that records be produced that provided this information, but the trial judge upheld the plaintiffs' refusal to provide the records. Again, the trial judge refused to allow defendants to call the women as witnesses while keeping their identities confidential.

The evidence at trial was undisputed as to the basic facts of the case: that on ten dates in 1989, 1990 and 1991, certain of the defendants sat down, with linked arms or joined together by Kryptonite bicycle locks, in front of doors to various abortion clinics or inside abortion clinics, and remained there until removed by police officers, causing abortion services to be prevented or delayed. The trial court made no findings that violence was involved in any of the protests. *See* Appendix to Appellant's Brief in the Supreme Judicial Court, Volume II, p. 525 (hereinafter, A., *Vol., p.*). The police officers and clinic staff, called as witnesses by plaintiffs, admitted that the protesters were nonviolent, and among the most nonviolent protesters they had seen. A., IX, 1595-1596, 1685-1687, 1724-1727; VII, 1867, 1871; IX, 2354, 2398, 2430. The photographs and videotapes taken by police and plaintiffs of many of the protests at issue show unequivocally that the protesters were not violent, indeed were passive, and merely sat in place praying until removed by police. (A., III, 575-578, 581-587, 591, 616, 620, 634, 638-639.

In order to support a finding that defendants' actions "threatened, intimidated or coerced," as required by MCRA, the trial court relied on evidence presented by plaintiffs concerning the "reaction" of women to defendants' protests. The court found that patients at each of the protests in issue experienced "emotional reactions" to the protests which included crying, shaking, and appearing "frightened" and "upset." As previously set forth, the defendants objected to this evidence because of their inability to obtain discovery from any of the alleged patients who experienced such reactions. Yet the court

cited no evidence of any physical or verbal threats at any time, by any defendant, to any alleged patient.[1]

The trial judge entered judgment against forty defendants (including the Petitioners) and in favor of all plaintiffs except the four membership organizations. Judgment entered under MCRA on October 17, 1991, and was amended on October 28, 1991, which enjoined defendants and those in active concert or participation with them from:

a. trespassing on, blocking or in any way obstructing access (either ingress or egress) to any facility in the Commonwealth which provides abortion counselling or services; or

b. physically restraining or obstructing or committing any acts of force or violence against persons entering, leaving, working at or seeking to obtain services from any facility in the Commonwealth which provides abortion counselling or services; or

c. directing, instructing, conspiring with and/or aiding or abetting directly or indirectly any person, persons, groups or organizations who engage in any of the acts described in paragraphs (a) and (b) above.

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[1] For example, there was *no* evidence that any alleged patient was ever struck by any defendant; *no* evidence that any patient was ever physically harmed by any of the defendants; *no* evidence that any alleged patient was ever threatened by a defendant; *no* evidence that any defendant ever made a threatening gesture or movement toward any patient. Indeed, there was *no* evidence that any defendant ever even said *anything* to any alleged patient while "blockading" a clinic. In fact, evidence was affirmatively presented, *by plaintiffs' witnesses*, that the defendants *did not* do any of the above, but rather sat until removed by police. A., IV, 1069-1070, 1085-1086, 1095-1096, 1103; VI, 1584, 1591-1592, 1594, 1686, 1689, 1728, 1790-1791; VII, 1930; VIII, 2047; IX, 2353-2354, 2427-2428; X, 2612-2613, 2682, 2742-2744, 2748; XII, 2993-2994.

Further amendment to the judgment was denied on November 13, 1991. The defendants herein (Kevin Blake, Sean Brogan, Mary Kelliher, John D. McCarthy and Mortimer O'Shea) appealed the judgment on January 13, 1992.

The Supreme Judicial Court of Massachusetts ("SJC") granted a request for direct appellate review and affirmed the trial court's judgment.[2] *Planned Parenthood League of Massachusetts, Inc.* v. *Blake*, 417 Mass. 467 (1994). The SJC rejected the defendants' claim that they were deprived of due process or a fair trial by the trial judge's denial of their efforts to identify the patients with whose rights they allegedly interfered. The court reasoned that, "[a]lthough the defendants' relevancy contention is theoretically sound, in the circumstances of this case it lacks practical plausibility." *Id.* at 477. The SJC thought it was implausible because of its perception that it was "unlikely" that any women would have provided the defendants with favorable testimony. *Id.* Furthermore, the SJC emphasized, the "intrusion into the privacy rights of these women would have been substantial." *Id.* at 478. Thus, the SJC ruled that the defendants were not entitled to learn the identities of these women, but, instead, could be found liable for threatening, intimidating or coercing women without ever having the opportunity to question them or even know who they were.

The SJC also rejected the defendants' claim that the Amended Permanent Injunction was constitutionally impermissible. *Id.* at 481. Judges O'Connor, Nolan and Lynch dissented, reasoning that clauses (a) and (c) of the injunction were overbroad. The dissent noted that these clauses impermissibly chilled conduct protected by the First Amendment, as they could be construed to prohibit the hindrance of access to clinics by nonphysical confrontation on public ways. *Id.* at 482-83, citing *Planned*

[2] There was one exception to the SJC's affirmation of the trial court: the SJC reversed and vacated the trial court's decision in favor of plaintiff Rebecca Roe and dismissed the action as to her.

Parenthood League of Massachusetts, Inc. v. *Operation Rescue*, 406 Mass. 701, 721-722 (1990) (O'Connor, J., dissenting).

The federal questions at issue in this petition were raised before both the trial judge and the SJC. The defendants briefed and argued extensively before the SJC that their inability to call women seeking abortions as witnesses had deprived them of due process. They had argued this same point on numerous grounds before the trial court. The SJC's opinion rejected the due process argument.

Similarly, the issues of unconstitutional overbreadth and vagueness were raised both at the trial court level and before the SJC. On May 21, 1990, the trial court entered a preliminary injunction similar to the permanent injunction now in place.[3] The defendants argued that the preliminary injunction was vague and overbroad in Defendants' Memorandum of Law in Support of Petition that Preliminary Injunction Be Vacated, Annulled or Suspended, July 31, 1989. On appeal to the SJC, the appellants again briefed and argued the issues of vagueness and overbreadth, this time with regard to the Amended Permanent Injunction. The SJC's opinion rejected this argument.

REASONS FOR GRANTING THE WRIT

The SJC decided an important question of federal law which has not been, but should be, settled by the Supreme Court: whether and to what extent the right to privacy outweighs a de-

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[3] The preliminary injunction enjoined the defendants, and those in active concert or participation with them, from:

a. trespassing on, blocking or in any way obstructing access (either ingress or egress) to any facility in the Commonwealth which provides abortion counselling or services; and

b. physically restraining or obstructing or committing any acts of violence against persons entering, leaving, working at or seeking to obtain services from any facility in the Commonwealth which provides abortion counselling or services, until further order of this Court.

fendant's due process right to cross-examine witnesses with key information. The scope and importance of the ruling in this case reaches far beyond the state of Massachusetts and the present context of protests at abortion clinics. The SJC's ruling creates a precedent which allows Massachusetts and other states to uphold discovery and trial procedures which deprive a defendant of due process and a fair trial, in the name of protecting a plaintiff's right to privacy. A writ of certiorari should issue to resolve this question, both to remedy the SJC's denial of due process and a fair trial to the defendants by holding them liable under MCRA for peaceful protests when they were not permitted to face and question their accusers, and to provide direction for the people and courts of our nation.

Moreover, the proceedings below, sanctioned by the SJC, have so far strayed from the course of judicial proceedings that this Court must act to correct this abuse. Heretofore, as evidenced in numerous decisions by this Court, a litigant's right to a fair trial has been the cornerstone of the judicial process. If there is a bedrock element to a fair trial, it must be that a defendant is entitled to know the name of and seek discovery from the plaintiff, the person who has made accusations against him. It is unheard of to deny a defendant access to the plaintiff's identity and to rule that a right to privacy is more important than a right to a fair trial. This startling departure from accepted judicial procedure must be remedied.

I. This Case Presents An Important, Unsettled Question Of Federal Law.

A. *The Question Presented Is Unsettled.*

This Court has often addressed the issue of a privacy right to avoid disclosure of personal matters, including in the abortion context. *See, e.g., Thornburgh* v. *American College of*

Obstetricians and Gynecologists, 476 U.S. 747, 766 (1986), overruled on other grounds by *Planned Parenthood of Southeastern Pennsylvania* v. *Casey*, 112 S.Ct. 2791 (1992); *Bellotti* v. *Baird*, 443 U.S. 622, 644 (1979), *reh'g denied*, 444 U.S. 887 (1979); *Whalen* v. *Roe*, 429 U.S. 589, 598-600 (1977); *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52, 80 (1976). This Court has also addressed the fundamental rights of due process and a fair trial. *See, e.g., Aetna Life Insurance Co.* v. *Lavoie*, 475 U.S. 813, 829 (1986) (Brennan, J., concurring), quoting *In re Murchison*, 349 U.S. 133, 136 (1955); *Withrow* v. *Larkin*, 421 U.S. 35, 46-47 (1975). However, the present case raises an important federal question which does not appear to have been addressed: what happens when these two rights conflict? Do the defendants, in preparing a defense to allegations that they threatened, intimidated or coerced women, have a right to confront the alleged victims and seek relevant information from them? Or, in the name of privacy, can the defendants be found liable under MCRA and be subjected to fines and prison sentences, without even learning whom they allegedly threatened, intimidated or coerced?

The SJC, when faced with the conflict between these rights, reasoned that the right to privacy superseded a defendant's right to question or even to know against whom he or she had committed a tortious act. Even while admitting that the defendants' argument that the women seeking abortions who were allegedly threatened, intimidated or coerced possessed critical information was "theoretically sound," the SJC denied the defendants' right to discover this information, so as not to infringe on the right to privacy. The SJC's approach threatens to allow the right of privacy to swallow up a defendant's due process rights. The only basis for the decision was the SJC's perception, without even knowing what the women were going to say, that the women would "obviously" not provide any testimony favorable to the defendants. This is a dangerous prece-

dent. Our system of jurisprudence operates on the assumption that our pre-existing prejudices and beliefs are not evidence; that only what the witnesses say is evidence. If the right to privacy allows a judge to prohibit evidence because his prejudices make him believe the evidence will not be useful, the judicial role has been dramatically altered.

This Court has not faced such a set of competing circumstances. There is no guidance for litigants confronted with such a conflict other than the SJC's opinion, which goes too far in protecting privacy rights to the sacrifice of due process.

B. *The Question Presented Is Important.*

A writ of certiorari should be granted because of the importance of this federal question, both for the defendants and for future litigants whose due process rights may also be decimated on the basis of the SJC's opinion.

If the judicial process, criminal *or* civil, harbors a more hallowed right than the right of an accused to know, confront and question his or her accuser, such right does not immediately come to mind. "The elementary principle underlying all trials of whatever nature seems to be that the rule of confrontation shall be applied where the witnesses are available. . . ." *S. Buschbaum & Co.* v. *Federal Trade Comm'n*, 153 F.2d 85, 87 (7th Cir. 1946).[4] That right was denied here because of a per-

[4] *See also Greene* v. *McElroy*, 360 U.S. 474, 496-497 (1959) ("Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. . . . We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. . . . This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases . . . but also in all types of cases. . . . Professor Wigmore, commenting on the importance of cross-examination, states . . . 'For two centuries past, the policy of the Anglo-American system of Evidence has been to regard the necessity of testing by cross-examination as a vital feature of the law. . . .").

ceived supervening right to privacy on behalf of clinic patients. This cannot be. The right to privacy is important and can be preserved by protective orders, the use of pseudonyms in pleadings and the like (all of which the trial court refused to use, instead flatly denying the defendants' right to depose or examine the true plaintiffs). It cannot be used to deprive the defendant of his due process right in order to shield the real plaintiff from being asked highly probative questions by the defendant (*i.e.*, "were you threatened, intimidated or coerced by the defendants?"), as happened here.

The SJC's decision also abandons the principle of discovery of all relevant information. Indeed, the decision does not merely allow the privacy right to impose on the discovery of *some* relevant information. The privacy right serves as an excuse for the SJC to exclude an entire category of witnesses who possess the *most* relevant information: whether the women were threatened, intimidated or coerced by the defendants. Such an unprecedented sacrifice of a defendant's due process rights can now be justified based on the SJC's decision. There is nothing in the SJC's decision to prevent future courts from refusing to allow an accused defendant to inquire into the truth of the accuser's allegations, the accuser's credibility, or indeed even the accuser's very existence. Once a court finds that the accuser's allegations concern a sufficiently delicate topic, the right to privacy can be invoked to obliterate any further exploration regarding the accuser. Such a result would be at the expense of the long-established due process rights of the defendant.

II. The SJC's Decision Violates the Due Process Clause By Depriving the Defendants of a Fair Trial and Preventing Them From Confronting the True Plaintiffs.

Throughout discovery and at trial, defendants sought the identities of the most important witnesses in the case, individuals who are in a sense the real plaintiffs: women who sought

abortion services and were allegedly prevented or delayed from getting those services because of defendants' activities.[5] The identities of such women and information they could have provided were critical to defendants' ability to defend against the claims. Defendants were deprived of due process by their inability to discover this information.

The due process clause of the United States Constitution provides that no state "shall . . . deprive any person of life, liberty, or property, without due process of law. . . ." United States Constitution, Amendment XIV, § 1. Courts have held that "[i]t is fundamental to a full and fair review required by the due process clause that a litigant have an opportunity to be confronted with all adverse evidence and to have the right to cross-examine available witnesses." *Nevels* v. *Hanlon*, 656 F.2d 372, 376 (8th Cir. 1981). *Accord Complaint of Bankers Trust Co.*, 752 F.2d 874, 890 (3rd Cir. 1984) (under Fifth Amendment, "[d]ue process mandates that a judicial proceeding give all parties an opportunity to be heard on the *critical and decisive allegations* which go to the *core* of the parties' claim or defense and to present evidence on the contested facts.") (emphasis in original).[6] *See also Chicago Ridge Theatre Ltd. Partnership* v. *M & R Amusement Corp.*, 855 F.2d 465, 468 (7th Cir. 1988) (due process prohibits court from relying on information where party has no opportunity to cross-examine source of information); *Brouillette* v. *Board of Directors of Merged Area IX*, 519 F.2d 126, 128 (8th Cir.

[5] Indeed, the plaintiffs to this action are not the real plaintiffs and lacked standing to maintain the action. To have standing under Massachusetts law, "a litigant must show that the challenged action has caused the litigant injury." *Slama* v. *Attorney General*, 384 Mass. 620, 624 (1981). The abortion clinics and Dr. Goldstein did not even allege, let alone prove, any injury to themselves and had no standing. (The claims of the remaining plaintiffs were dismissed on this ground.) The SJC should have reversed the judgment against the defendants based on this lack of standing alone.

[6] The requirements of the due process clause of the Fifth and Fourteenth Amendments are identical. *United States* v. *Agurs*, 427 U.S. 97, 107 (1976).

1975) (Iowa statute granting teachers a right to a hearing before termination based on allegations against teachers was "intended to provide non-tenured teachers with procedural due process" which requires, at a minimum, "*notice of both the names of those who have made allegations against the teacher* and the specific nature and factual basis for the charges") (emphasis added); *Casada* v. *Booneville School Dist. No. 65*, 686 F. Supp. 730, 731-732 (W.D. Ark. 1988) (same but decision based directly on Fourteenth Amendment). By refusing to let the defendants know the identities of those making allegations against them, or at least to question them under a protective order or pseudonym, the SJC deprived the defendants of this right.

In *Western Electric Co., Inc.* v. *Stern*, 544 F.2d 1196 (3rd Cir. 1976), *reh'g denied*, 551 F.2d 1 (1976), plaintiff alleged that Western Electric violated Title VII by discriminating against her on the basis of sex. *Id.* at 1197. Plaintiff further alleged that Western Electric had discriminated on a class-wide basis against women and sought certification of a class of women employed at or seeking employment at Western Electric. *Id.* at 1197-1198. Based on these allegations, Western Electric sought discovery from plaintiff of how each member of the plaintiff class was discriminated against by the company. *Id.* at 1198. The court granted Western Electric some discovery on the issue but limited the discovery to evidence "on which [plaintiff] intends to rely during the class stage. . . ." *Id.* The court ruled that, in providing discovery, plaintiff "need not include any information on which she does not intend to rely, even though it might be relevant to Western's defense." *Id.* The Appeals Court reversed and ordered discovery, holding:

> to deny Western the right to present a full defense on the issues would violate due process. Thus, while plaintiffs may make out a *prima facie* case under Title

> VII without introducing evidence on individual cases, at least under some circumstances, defendants must be allowed to present any relevant rebuttal evidence they choose, including evidence that there was no discrimination against one or more members of the class.

Id. at 1199. In our case, plaintiffs similarly alleged they would not rely (although they did) on evidence concerning patients. As in *Western Electric*, that is not enough to prevent defendants from taking discovery. Defendants here should have been allowed to seek discovery from patients and show that these women may not have been "threatened, intimidated or coerced." *See Matter of Extradition of Singh*, 123 F.R.D. 108, 123-126 (D.N.J. 1987) (denial of discovery on crucial issue violated due process).

Defendants were charged under MCRA, which requires the plaintiffs to demonstate that: (1) a person; (2) in the exercise of rights secured by law; (3) was interfered with; (4) by threats, intimidation or coercion. Moreover, in the context of the conduct which occurred here, which included activity protected by the First Amendment, plaintiffs had to prove that any interference with a woman's right occurred through activity which is *not protected* by the First Amendment. *NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886, 918 (1982); *Redgrave* v. *Boston Symphony Orchestra, Inc.*, 399 Mass. 93, 97 (1987) ("a person exercising constitutional rights who interferes with another's constitutional rights is not . . . 'interfering with the rights of another person by "threats, intimidation or coercion,'" within the meaning of G.L. c. 12, §§ 11H and 11I."). Yet the defendants were not allowed to confront the women who were allegedly seeking abortion services to inquire, among other things, whether a scheduled abortion was delayed because of the woman's reluctance to encounter marching protesters, re-

luctance to be recognized, reluctance to have people show them pictures or literature, reluctance to go near a place where a crowd had gathered, a change of mind about the morality of abortion, information from clinic personnel or police that abortions were impossible that day or would be delayed due to the protesters, or (the only pertinent reason) because she was "threatened," "intimidated" or "coerced" by the defendants' actions. If due process requires anything, it requires that a defendant be allowed to learn the identity of the plaintiff so that these questions could be asked.

A close analogy concerns the rule that where an informant has information relevant to the defense of a criminal case, the informant's identity *must* be disclosed to the defendant or the case dismissed. For example, in *Roviaro* v. *United States*, 353 U.S. 53 (1957), the Supreme Court reversed a conviction because the trial court had failed to require the government to disclose the identity of an informant to the defendant. This Court noted that although the government had a qualified privilege not to disclose informants' identities, this privilege was limited by:

> the fundamental requirements of fairness. Where the disclosure of an informer's identity . . . is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, *the privilege must give way*. In these situations the trial court may require disclosure and, if the Government withholds the information, dismiss the action.

Id. at 60-61 (emphasis added).

The case for disclosure here is much stronger than in the cases cited. The alleged patients had the most crucial evidence in the case. They, and they alone, could testify whether they actually felt "threatened," "intimidated" or "coerced," informa-

tion which ultimately decides whether the defendants are liable under MCRA.[7] Moreover, the reason for the privilege allowing the withholding of an informant's identity is the fear that the informant may not last long on this earth if disclosure is required. If even this fear must give way to the defendant's right to defend himself (and it is not based on the Sixth Amendment but rather on the concept of fairness at trial), the women's alleged or even a legitimate fear of harassment must give way.[8] The defendants herein have been deprived of their due process

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[7] Interestingly, plaintiffs argued and the SJC agreed that the patients' identities were irrelevant because the police officers and clinic personnel who testified about the patients' reactions were subject to cross-examination. In *Roviaro*, the Court specifically held that the ability of the defendant to cross-examine police officers about informer John Doe's activities "was hardly a substitute for an opportunity to examine the man who had been nearest to him and took part in the transaction." *Rovario*, 353 U.S. at 64.

[8] Any fear of harassment could be addressed by protective orders or the use of pseudonyms. Indeed, the principle that a defendant, in order to defend herself, is entitled to learn who is making allegations against her is further supported by cases in which the plaintiffs have sought to proceed under a pseudonym. In such cases, even where courts have granted the request, they have noted that the defendant maintains a strong interest in knowing who has sued him and is, in fact, allowed to know plaintiff's identity even if the public at large is not. *National Commodity and Barter Ass'n* v. *Gibbs*, 886 F.2d 1240, 1245 and n.2 (10th Cir. 1989) (denying motion to sue under pseudonym and to remain anonymous even to defendant because "[t]o permit this case to progress in this manner would deny the defendants any ability to defend against the claims against them. . . ."); *Lindsey* v. *Dayton-Hudson Corp.*, 592 F.2d 1118, 1125 (10th Cir. 1979), *cert. denied*, 444 U.S. 856 (1979) (denying plaintiff's motion to sue under a pseudonym, because, in part, use of pseudonym "may cause problems to defendants engaging in discovery and establishing their defenses. . . ."); *Doe* v. *United Services Life Ins. Co.*, 123 F.R.D. 437, 439 (S.D.N.Y. 1988) (granting motion to sue under pseudonym because, in part, "[defendant] already knows Doe's true identity, [so] it will have full discovery rights as the case progresses, and it will only be barred from using or disclosing the fruits of its discovery for purposes other than the defense of this action."); *Free Market Compensation* v. *Commodity Exchange, Inc.*, 98 F.R.D. 311, 312-313 (S.D.N.Y. 1983) (denying motion despite the fact that plaintiff agreed to provide true identity to defendant's counsel pursuant to protective order preventing defendant from disclosing identity to others); *Doe* v. *Rostker*, 89 F.R.D. 158, 162 (N.D. Cal. 1981) (denying plaintiff's motion to sue under pseudonym noting that "[t]he defendant . . . has a strong interest in knowing who is suing him").

right to a fair trial by the denial of the discovery of the women's identities.[9]

Indeed, the gross unfairness in this case goes beyond anything to be found in the case books. Here the identities of the real plaintiffs were denied defendants in discovery, so no depo-

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[9] Indeed, even the simple but gross disregard of discovery rules and principles by the court in this case is grounds for finding a due process violation. Discovery of all relevant information is the cornerstone of our judicial system in both the federal and state courts. Rule 26(b), Mass. R. Civ. P., like its identical federal counterpart, provides for inquiry into "any matter, not privileged, which is relevant to the subject matter involved in the pending action. . . ." Courts have consistently noted that the right to broad and open discovery is a highly valued component of litigation. As the Supreme Court has stated:

> We agree, of course, that the deposition-discovery rules are to be accorded a broad and liberal treatment. . . . Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession.

Hickman v. *Taylor*, 329 U.S. 495, 507 (1947).

In civil rights cases, courts have consistently held that a defendant is entitled during discovery to the names of those individuals whose rights were allegedly violated by the defendant's actions. For example, in *National Org. for Women* v. *Sperry Rand Corp.*, 88 F.R.D. 272 (D. Conn. 1980), NOW brought an action on behalf of its members alleging that the defendant had engaged in discriminatory practices against its women employees and applicants. The defendant sought, through discovery, a list of all members of NOW. *Id.* at 273. NOW objected, claiming that their "privacy rights" would be infringed with harmful employment consequences if disclosure were required. Despite NOW's objection, identical to the one made by these plaintiffs, the court held that NOW was required to divulge the names of those members against whom the defendant had allegedly discriminated. *Id.* at 275. The court noted that the defendant was entitled to this information "in order to prepare an adequate defense" and that, by bringing the suit, plaintiffs had at least partially waived any right to privacy they may otherwise have had. *Id. See also Southern Methodist Univ. Ass'n of Women Law Students* v. *Wynne & Jaffe*, 599 F.2d 707, 713 (5th Cir. 1979); *United States* v. *School Dist. No. 1, Lexington County, South Carolina*, 40 F.R.D. 391, 393-395 (D.S.C. 1966); *EEOC* v. *St. Francis Community Hosp.*, 70 F.R.D. 592, 595 (D.S.C. 1976).

So clearly was the information sought by defendants relevant, indeed crucial, to their ability to defend that the trial court, in denying the requested discovery, denied the defendants their due process right to a fair trial. The SJC's decision upholding that denial must be reversed. *See, e.g., Westinghouse Electric Corp.* v. *Republic of the Philippines*, 951 F.2d 1414, 1422 (3rd Cir. 1991) (order denying discovery of relevant information requires new trial).

sitions were possible. The denial continued through trial, so defendants could not summon any of these women to testify at trial, deposition or no deposition. Plaintiffs put no clinic patients on the stand at trial, so there was no opportunity even to cross-examine, without preparation, a hand-picked representative. Adding insult to injury, plaintiffs put other witnesses on the stand who testified that they observed patients who were emotionally upset, but: "no, I won't tell you who they were." The SJC's decision offends the Constitution. A writ of certiorari should be granted to remedy this deprivation of due process.

III. The SJC's Decision Upholds A Constitutionally Impermissible Injunction.

The SJC's decision further offends the Constitution in light of the particular wording of the Amended Permanent Injunction. Clause (a) and clause (c), which incorporates clause (a), forbid the defendants and others "in active concert or participation with them" from "trespassing on, blocking or *in any way* obstructing access" to abortion facilities (emphasis added). Yet such broad language goes too far, creating an impermissible chilling effect on the defendants and others acting with them.

A reasonable person wishing to express his views about the morality of abortion and whether abortion should be legal will be chilled from doing so by the language of this injunction. Such an individual cannot be confident that he will not violate the injunction if he merely joins others on a public way near a clinic in order to picket, pray, chant, and exhort others to accept his viewpoint. *Planned Parenthood League of Massachusetts, Inc.* v. *Blake*, 417 Mass. 467, 483 (1994) (O'Connor, J., dissenting), citing *Planned Parenthood League of Massachusetts, Inc.* v. *Operation Rescue*, 406 Mass. 701, 721 (1990)

(O'Connor, J., dissenting). The prohibition against obstructing *in any way* must be construed to include the hindrance of access to clinics by nonphysical confrontation. *Id.*

Such a prohibition encompasses conduct clearly protected by the First Amendment to the United States Constitution. The Amended Permanent Injunction will chill abortion opponents from engaging in protected speech. It will also serve as precedent for future individuals to be subject to similar, impermissible chilling injunctions. A writ of certiorari should issue to correct this unconstitutional injunction.

CONCLUSION

In light of all the reasons stated above, the Petitioners respectfully request this Court to issue a writ of certiorari to review the judgment and opinion of the Supreme Judicial Court of Massachusetts.

Respectfully submitted,

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APPENDIX A

PLANNED PARENTHOOD LEAGUE OF MASSACHUSETTS, INC., & others[1] *vs.* KEVIN BLAKE & others.[2]

Middlesex. December, 7 1993. - April 11, 1994.

Present: LIACOS, C.J., WILKINS, ABRAMS, NOLAN, LYNCH, O'CONNOR, & GREANEY, JJ.

Practice, Civil, Standing. *Abortion. Injunction. Civil Rights,* Availability of remedy, Coercion. *Identification. Words,* "Threats," "Intimidation," "Coercion."

In an action in which the Attorney General had standing to seek injunctive relief under the provisions of the Massachusetts Civil Rights Act, G.L. c. 12, §§ 11H and 11I, it was not necessary for this court to decide whether certain other plaintiffs also had standing. [472]

In an action seeking injunctive relief under the Massachusetts Civil Rights Act, G.L. c. 12, §§ 11H and 11I, the judge, in granting the relief sought, concluded that the defendants' conduct in knowingly trespassing on the property of clinics that provided abortion counseling and services, and in intentionally using their bodies or Kryptonite bicycle locks, or both, to prevent others physically from entering, leaving or using medical facilities to obtain abortions to which they were constitutionally and lawfully entitled, constituted threats, intimidation, and coercion within the meaning of the act and was an actual or potential physical confrontation accompanied by the threat

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[1] Preterm, Inc., Repro Associates, Inc., Crittenton Hastings House, Stanton P. Goldstein, Rebecca Roe, Barry Adler doing business as Gynecare, and the Commonwealth through the Attorney General and as an intervener. The remaining original plaintiffs, except for Rebecca Roe, are providers of abortion services.

[2] Sean Brogan, Mary Kelliher, John D. McCarthy, Jr., and Mortimer O'Shea. None of the other defendants, including Operation Rescue: Boston, Pro-Life Action Network of Arlington, and numerous individuals, has appealed.

of harm; further, the judge was warranted in finding, and correct in ruling, that a reasonable woman seeking abortion services would be made fearful and apprehensive and would feel pressured by the defendants' conduct so that she would desist from seeking those services while that conduct continued. [473-476]

In an action brought under G.L. c. 12, §§ 11H and 11I, the judge properly rejected the defendants' attempts to identify the women affected by the defendants' conduct in "blockading" facilities providing abortion counseling and services, none of whom were called as witnesses by the plaintiffs, where there was no reasonable risk in the circumstances that nondisclosure had prejudiced the defendants' case and where the intrusion on the privacy rights of those women would have been substantial. [476-479]

An injunctive order requiring certain defendants to refrain from "aiding or abetting directly or indirectly" persons who engage in specific prohibited acts was not unconstitutionally vague. [480-481]

O'CONNOR, J., with whom NOLAN and LYNCH, JJ., joined, dissenting, expressed the view, previously expressed in *Planned Parenthood League of Massachusetts, Inc.* v. *Operation Rescue*, 406 Mass. 701 (1990) (*Planned Parenthood I*), that the injunctive relief granted was constitutionally overbroad and should be vacated. [482-483]

CIVIL ACTION commenced in the Superior Court Department on April 19, 1989.

The case was heard by *Peter M. Lauriat*, J.

The Supreme Judicial Court granted a request for direct appellate review.

Francis H. Fox (*Robert A. Miley & Wendy A. Miklus* with him) for Kevin Blake & others.

Judith E. Beals, Assistant Attorney General (*Donna L. Palermino*, Assistant Attorney General, with her) for the Attorney General.

John H. Henn (*Teresa A. Martland* with him) for Planned Parenthood League of Massachusetts, Inc., & others.

Cornelius J.P. Sullivan, for William Cotter & another, was present but did not argue.

Janet Benshoof, Catherine Albisa & Priscilla J. Smith, of New York, for Center for Reproductive Law & Policy, amicus curiae, submitted a brief.

Nonnie S. Burnes & Sarah R. Wunsch, for Civil Liberties Union of Massachusetts, amicus curiae, submitted a brief.

WILKINS, J. The five defendants appeal from an amended judgment that permanently enjoined them, among other things, from obstructing access to any facility in the Commonwealth that provides abortion counseling or services and from using force against persons entering or leaving or working at any such facility.

In April, 1989, the plaintiffs commenced this action pursuant to the Massachusetts Civil Rights Act (MCRA) (G.L. c. 12, §§ 11H & 11I [1992 ed.]).[3] In April, 1990, the Attorney Gen-

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[3]These sections read as follows:

"Section 11H. Whenever any person or persons, whether or not acting under color of law, interfere by threats, intimidation or coercion, or attempt to interfere by threats, intimidation or coercion, with the exercise or enjoyment by any other person or persons of rights secured by the constitution or laws of the United States, or of rights secured by the constitution or laws of the commonwealth, the attorney general may bring a civil action for injunctive or other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the right or rights secured. Said civil action shall be brought in the name of the commonwealth and shall be instituted either in the superior court for the county in which the conduct complained of occurred or in the superior court for the county in which the person whose conduct complained of resides or has his principal place of business."

"Section 11I. Any person whose exercise or enjoyment of rights secured by the constitution or laws of the United States, or of rights secured by the constitution or

eral was allowed to intervene in the name of the Commonwealth. The case was tried on a joint amended complaint stating a single claim under the MCRA and seeking a permanent injunction in accordance with G.L. c. 12, §§ 11H, 11I, & 11J (1992 ed.).[4] In the final judgment the judge dismissed the claims of certain plaintiffs and dismissed claims against many individual defendants. The injunction whose entry is challenged in this appeal was entered against Operation Rescue: Boston, Pro-Life Action Network of Arlington, and numerous individuals, including the five appellants. We allowed the defendants' application for direct appellate review.

The defendants make three substantive challenges to the permanent injunction, which we shall consider in turn after commenting briefly on the standing of the Attorney General and the other plaintiffs to maintain this action. First, however, we set forth certain findings of fact that are typical of the circumstances that led the trial judge to rule that the defendants had violated the MCRA and should be permanently enjoined.

Operation Rescue: Boston and Pro-Life Action Network organized and encouraged participation in what they call "rescues," blockades or invasions of abortion clinics. They offered advice, training, and seminars to prepare participants in "rescues" for arrest, jail, and money judgments. The purpose of a

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laws of the commonwealth, has been interfered with, or attempted to be interfered with, as described in section 11H, may institute and prosecute in his own name and on his own behalf a civil action for injunctive and other appropriate equitable relief as provided for in said section, including the award of compensatory money damages. Any aggrieved person or persons who prevail in an action authorized by this section shall be entitled to an award of the costs of the litigation and reasonable attorneys' fees in an amount to be fixed by the court."

[4] In *Planned Parenthood League of Mass., Inc.* v. *Operation Rescue*, 406 Mass. 701 (1990), this court considered certain questions concerning a preliminary injunction entered in this case and upheld various challenges to that preliminary injunction. In *Commonwealth* v. *Cotter*, 415 Mass. 183 (1993), and *Commonwealth* v. *Brogan*, 415 Mass. 169 (1993), this court affirmed convictions for the violation of that preliminary injunction, the operative terms of which appear in the *Brogan* opinion. See *id.* at 170 n.1.

"rescue" is to keep women out of an abortion clinic and to prevent abortions from taking place at that clinic. The judge found that on nine dates between August 30, 1989, and January 17, 1991, anti-abortion demonstrators blocked entrances or physically invaded abortion clinics or buildings housing abortion clinics in the Commonwealth. These "rescues" occurred in Hyannis, Boston, Brookline, New Bedford, Worcester, and Springfield, and involved six abortion clinics. In each of these instances, the blocking or invading demonstrators remained on private property after they had been notified that they were trespassing.

It would prolong this opinion unnecessarily to recite all the facts of each incident. As an example, we describe the August 10, 1990, blockade of Preterm Health Services, Inc. (Preterm), a clinic located on Beacon Street in Brookline, in which each of the defendants participated. From 6:40 A.M. until 8:30 A.M. on that day, a group of about twenty people sat with their backs up against the front door of the building that housed the clinic. It was not possible to open that door. Another group sat with their backs against the rear public entrance to the building, preventing the door from being opened. The defendants were advised that they were trespassing. Brookline police officers read the preliminary injunction to the groups at the two doors and demanded that they leave. Shortly after 8:20 A.M., Brookline police began removing the persons blocking access to the building. During the period of the blockade most patients and staff could not enter the building. A few patients entered the building through the garage or the back door during a brief period when that door was not blocked. Those patients who entered after 8:50 A.M. "appeared to be very upset — they were crying and shaking and holding on tightly to others as they walked into the clinic. Their demeanor differed markedly from the usually calm demeanor of patients entering Preterm on days when many picketers but no blockaders were

present outside Preterm." When the police finally cleared the front door of protesters, a crowd of patients entered the building. They appeared upset; they were crying, breathing heavily, and shaking.[5]

Each of the defendants before us participated in the occupation of a portion of the medical area of a clinic. We recite one typical example, in which the defendants Brogan and O'Shea participated on January 17, 1991, at Womancare of New Bedford. The doors to the medical area of the clinic were kept locked. A woman who pretended to be a patient was able by a ruse to have the doors unlocked, and fifteen to twenty people rushed into the medical area of the clinic, dragging a protesting clinic employee along with them where she was pushed up against a wall. One group of invaders sat with their backs to each other in one examining room, locked together with Kryptonite bicycle locks around their necks. Another group of six lay on the floor extending into the entrances of two other examining rooms, locked together by a series of Kryptonite bicycle locks around their necks. Three of these people also wore at their ankles a modified Kryptonite bicycle lock encased in a welded steel pipe in such a way that a locksmith found it impossible to reach the lock until the fire department cut the casing. No scheduled abortions were performed that day. A patient who was in the clinic when the incident started was extremely upset. The police ultimately removed the intruders.

1. The defendants correctly grant the Attorney General has standing to maintain this action (see G.L. c. 12, § 11H [1992

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[5] On August 23, another blockade occurred at Preterm in which all the appellants except Blake participated. On this occasion, two Kryptonite locks were placed on the outside of the rear doors of the building and four such locks were placed on the gates to the private garage in the building. Patients whose procedures were delayed were crying and tense when they reached the clinic. "They were concerned for their privacy and confidentiality."

ed.]), but argue that no other plaintiff has.[6] We need not decide the standing of the other plaintiffs, a question which involves in part the right of a doctor or an abortion clinic to argue the constitutional rights of patients.[7] The trial judge made limited findings on the question whether the clinics sustained harm in their own right from the defendants' conduct. If they did, they could have standing to maintain this action on their own behalves. As we have said, however, the standing of the Attorney General supports the maintenance of this action. We, therefore, turn to the defendants' substantive challenges to the judgment entered against them.

2. The defendants' conduct amounted to threats, intimidation, and coercion within the meaning of those words in G.L. c. 12, § 11H. The defendants grant that they sat in clinics and in clinic doorways and thereby delayed or prevented abortions. This, they argue, cannot establish liability under the MCRA, because their conduct did not interfere with, or attempt to interfere with, anyone's rights "by threats, intimidation or coercion." G.L. c. 12, § 11H.

The defendants first say that their conduct was a direct frustration of the rights of others, and that a "direct violation of a person's rights does not by itself involve threats, intimidation, or coercion." *Longval* v. *Commissioner of Correction*,

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[6] The action should have been dismissed as to Rebecca Roe, a fictitious person. See *Doe* v. *Governor*, 381 Mass. 702, 705 (1980). The plaintiffs conceded the point at trial.

[7] The Supreme Court of the United States divided evenly on this point in *Singleton* v. *Wulff*, 428 U.S. 106, 113-118 (1976). See *id.* at 131 (Powell, J., dissenting). Lower Federal courts have generally held that abortion providers have standing to assert the rights of their patients who are not parties to the action. See, e.g., *New York State Nat'l Org. for Women* v. *Terry*, 886 F.2d 1339, 1347-1348 (2d Cir. 1989), *cert. denied*, 495 U.S. 947 (1990); *Planned Parenthood Ass'n of Cincinnati* v. *Cincinnati*, 822 F.2d 1390, 1394-1396 (6th Cir. 1987).

We need not decide whether the doctor or the clinics have standing under the law of the Commonwealth (see *Slama* v. *Attorney Gen.*, 384 Mass. 620, 624-625 [1981]), or whether this question is irrelevant if they have standing under Federal law.

404 Mass. 325, 333 (1989). See *Nicholas B.* v. *School Comm. of Worcester*, 412 Mass. 20, 24 (1992); *Layne* v. *Superintendent, Mass. Correctional Inst., Cedar Junction*, 406 Mass. 156, 158 (1989); *Pheasant Ridge Assoc. Ltd. Partnership* v. *Burlington*, 399 Mass. 771, 781 (1987). Each of these cases involved direct action against the plaintiff which "by itself" (*Longval, supra*) did not amount to a violation of the MCRA. If, however, direct action also includes threats against, or intimidation or coercion of, a particular individual or individuals, liability under the MCRA can be established, and will be established if such threats, intimidation, or coercion interfered with that individual's exercise or enjoyment of rights secured by law. The judge correctly concluded that this case involved more than simple direct action in denial of the rights of women seeking abortion services.

The defendants next claim that the facts do not show an actual or potential physical confrontation accompanied by a threat of harm, proof of which has been an element of MCRA claims. See *Willitts* v. *Roman Catholic Archbishop of Boston*, 411 Mass. 202, 210 (1991); *Layne* v. *Superintendent, Mass. Correctional Inst., Cedar Junction, supra* at 158; *Bally* v. *Northeastern Univ.*, 403 Mass. 713, 719-720 (1989).[8] In such circumstances a threat, intimidation, or coercion, interfering with secured rights gives rise to a MCRA violation. There is no doubt that the defendants' conduct involved physical confrontations accompanied by threats of harm.

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[8] The Massachusetts Civil Rights Act was enacted in response to deprivations of secured rights by private individuals using violence or threats of violence amounting to racial harassment. Our cases holding that the Massachusetts Civil Rights Act was violated have involved actual or potential physical confrontations involving a threat of harm. *Redgrave* v. *Boston Symphony Orchestra, Inc.*, 399 Mass. 93, 95 (1987), for example, involved potential threats to the physical safety of the audience and symphony players. Evidence of an actual or potential physical confrontation between two peole (i.e., clinic staff and the defendants) that has the effect of depriving a third person (i.e., patients) of protected rights can sufficiently prove a violation of the MCRA. See *id.* at 100.

This court has not adopted a comprehensive definition of the words "threats, intimidation or coercion." The trial judge defined the words in terms that we accept. "Threat" in this context involves the intentional exertion of pressure to make another fearful or apprehensive of injury or harm. See *Redgrave* v. *Boston Symphony Orchestra, Inc.*, 399 Mass. 93, 104 (1987) (O'Connor, J., dissenting); *Delaney* v. *Chief of Police of Wareham*, 27 Mass. App. Ct. 398, 409 (1989) ("acts or language by which another is placed in fear of injury or damage"). Cf. *Commonwealth* v. *Ditsch*, 19 Mass. App. Ct. 1005 (1985) (reasonable apprehension on the part of the recipient of a criminal threat). "Intimidation" involves putting in fear for the purpose of compelling or deterring conduct. See *Redgrave* v. *Boston Symphony Orchestra, Inc.*, *supra*; *Delaney* v. *Chief of Police of Wareham, supra* ("creation of fear to compel conduct"). In *Deas* v. *Dempsey*, 403 Mass. 468, 471 (1988), we quoted a definition of coercion from Webster's New International Dictionary at 519 (2d ed. 1959): "the application to another of such force, either physical or moral, as to constrain him to do against his will something he would not otherwise have done." See *Delaney* v. *Chief of Police of Wareham, supra* ("the active domination of another's will").

In the context of this case, the judge correctly applied the objective standard of whether a reasonable woman seeking abortion services would be threatened, intimidated, or coerced by the defendants' conduct. Cf. *Commonwealth* v. *DeVincent*, 358 Mass. 592, 593 (1971) ("the threat is to be tested objectively; the state of mind of the person threatened is not controlling"); *Commonwealth* v. *Ditsch, supra* (reasonable apprehension of criminal threats). The defendants do not challenge the use of this standard.

Based on these principles, the judge properly concluded that the defendants' conduct constituted threats, intimidation, and coercion. He made ultimate findings and drew reasonable infer-

ences that the defendants knowingly trespassed on clinic property and intentionally used their bodies or Kryptonite bicycle locks, or both, to prevent others physically from entering, leaving, or using medical facilities to obtain abortions to which they were constitutionally and lawfully entitled. Their conduct "presented frightening, threatening and impermeable physical obstacles to patients attempting to enter the clinics, and forced those patients to forego their right to enter the clinics and obtain abortion services." "The patients reasonably perceived the crowding of a large number of bodies in a confined area of a medical facility as posing a risk of personal physical harm." "[T]he acts of trespassing and crowding into clinic waiting rooms, conference rooms, operating rooms and medical areas reasonably threatened and intimidated patients who were there awaiting services." "The defendants' actions were specifically designed to dissuade the patients from seeking the immediate care and treatment to which they were constitutionally entitled." The judge ruled properly that the defendants' conduct "constitutes the application of physical force to constrain the patients and staff of the plaintiff clinics from receiving and providing abortion services. Such conduct is coercive within the meaning of MCRA. The Court further finds that such conduct constitutes 'an actual or potential physical confrontation accompanied by the threat of harm.' "

"These actions were threatening, intimidating and coercive to patients who sought to enter and use the clinics' facilities. The defendants' physical confrontation of clinic patients and staff on numerous occasions in cities and towns across the Commonwealth, even where no violence was involved, was designed, intended and highly likely to instill fear and concern for personal safety in a reasonable person seeking abortion services."[9] In these circumstances, the judge was warranted in

[9] By contrast, the Court finds and concludes that lecturing, counselling, picketing, signing and praying at or near the clinics by certain defendants and their supporters,

finding, and was correct in ruling, that a reasonable woman seeking abortion services would be made fearful and apprehensive, and would feel pressured, by the defendants' conduct so that she would desist from seeking those services while that conduct continued.

3. The defendants claim error in the rejection of their various attempts to identify and then depose the patients with whose rights they had admittedly interfered. The defendants assert that they were entitled to have a chance to rebut the plaintiffs' case by offering testimony from patients whose scheduled procedures at blockaded clinics were delayed or postponed. The defendants' purpose was to show that the delays were not the result of threats, intimidation, or coercion perceived by the patients, but rather were the result of the reality that the clinics were effectively closed by the blockades.

As we have already noted, the standard is whether a reasonable woman would have felt threatened, intimidated, or coerced by the defendants' conduct. Therefore, unlike a criminal case in which proof of a victim's state of mind may be indispensable in making the prosecution's case (see, e.g., *Commonwealth* v. *Chalifoux*, 362 Mass. 811, 816 [1973]), testimony concerning the states of mind of specific women who were unable to obtain abortions as planned was not essential to the plaintiffs' proof. We are not concerned here with the rights of a criminal defendant, but only with a civil action for an injunction with no claim by specific women for the award of damages. Because the Commonwealth undertook to prove its case through nonpatient witnesses who were present at the protests, no patient

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where the patients' access to the clinics was not obstructed or precluded, did not constitute threats, intimidation or coercion of the clinics' patients. So long as the defendants remain on public property and do not create physical barriers or promote physical confrontation or physical contact, then their activities cannot reasonably be perceived as threatening, intimidating or coercive in violation of MCRA."

whose rights were allegedly interfered with testified. The denial before and during trial of attempts to identify such persons, therefore, did not impede the defendants' cross-examination of the plaintiffs' witnesses. On the other hand, any evidence that women who were unable to obtain abortions as scheduled did not feel threatened, intimidated, or coerced by the defendants' conduct would be relevant to the issue of the reaction of a reasonable woman in the circumstances. How actual participants responded to events could be a guide to how a reasonable person would react in the same circumstances.[10] Cf. *Commonwealth* v. *Matchett*, 386 Mass. 492, 500-501 (1982).

Although the defendants' relevancy contention is theoretically sound, in the circumstances of this case it lacks practical plausibility. The number of trespasses, the scores of scheduled abortions that were impeded, the physical intrusiveness of the blockaders, and the evidence of the reactions of patients and clinic personnel make it unlikely that the defendants would have discovered evidence from these women, whose lives they disrupted, that would have led the trial judge to factual conclusions other than those he reached. In other words, if there had been error on this issue, it would have created no reasonable risk that nondisclosure prejudiced the defendants. Cf. *Com-*

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[10] Moreover, as a matter of discovery, the range of permissible inquiry is broad. See Mass. R. Civ. P. 26(b), 365 Mass. 772 (1974); *Hickman* v. *Taylor*, 329 U.S. 495, 507 (1947), construing a cognate rule of Federal procedure.

None of the appellants, however, sought by pretrial discovery to learn the identities of the women who were affected by their conduct. They rely on a discovery request and an attempt to obtain a court order enforcing discovery from certain clinics filed by another defendant. No enforcement order was sought against the Attorney General who probably did not have any knowledge of which patients were affected by the defendants' conduct.

The defendants were thwarted in obtaining the same information by subpoena at trial. Among the facts agreed to by the Attorney General, the other plaintiffs, and the defendants in a joint pretrial memorandum was that: "Defendants in discovery have sought the identities of women who were scheduled to receive services at the clinics on the days in question and plaintiffs have declined to produce them." We shall assume in the defendants' favor that all aspects of their argument concerning the denial of information sought is before us.

monwealth v. *Bishop*, 416 Mass. 169, 181 (1993), citing *Pennsylvania* v. *Ritchie*, 480 U.S. 39, 57 (1987) ("[E]vidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome").

It was, in any event, within the judge's discretion whether to grant or deny the defendants' attempts to learn, by pretrial order and subpoena, the identities of the numerous women with whose rights they had interfered. Because no such woman testified at trial, the plaintiffs assumed the task of proving threats, intimidation, and coercion without testimony from the women concerning their states of mind.

The intrusion into the privacy rights of these women would have been substantial. The allowance of disclosure in cases such as this could have a discouraging impact on the bringing of actions to enforce rights under the MCRA and on a woman's exercise of her constitutional right to an abortion. See *Planned Parenthood of Southeastern Pa.* v. *Casey*, 112 S.Ct. 2791, 2829-2830 (1992) (disclosure through spousal notification invalid as an undue burden that "will operate as a substantial obstacle to a woman's choice to undergo an abortion"); *Thornburgh* v. *American College of Obstetricians & Gynecologists*, 476 U.S. 747, 766 (1986) ("A woman and her physician will necessarily be more reluctant to choose an abortion if there exists a possibility that her decision and her identity will become known publicly"), overruled on other grounds by *Planned Parenthood* v. *Casey*, *supra* at 2823; *Commonwealth* v. *Collett*, 387 Mass. 424, 428 (1982) ("If it becomes known that confidences are violated, other people may be reluctant"). Considering the likelihood that the defendants would obtain no evidence materially beneficial to them from women whose lives they intentionally and admittedly disrupted and further

considering that disclosure of the identity of these women would intrude into their privacy on a matter of constitutional right,[11] we conclude that the trial court did not abuse its discretion in denying disclosure of the identities of the women affected by the defendants' conduct.[12]

We add an observation, not essential to our conclusion on this issue, but supportive of it. The Attorney General, as a plaintiff in this action, represents the public interest in guarding against future violations of the MCRA. The Legislature has given him special standing to pursue injunctive relief in cases such as this. G.L. c. 12, § 11H. This action is brought solely to protect against future unlawful conduct that would be harmful to persons not currently identifiable. In such a case, the fact that the defendants' unlawful conduct if repeated would cause a reasonable woman in the circumstances to feel threatened, intimidated, or coerced requires prospective relief in the public interest.[13]

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[11] The constitutional right of privacy concerns a person's interest both in avoiding disclosure of personal matters and in independence in making certain kinds of important decisions. See *Whalen* v. *Roe*, 429 U.S. 589, 599-600 (1977). Rejecting a claim that a New York law threatened these interests because it required the confidential filing and computer storage of information concerning the use of certain prescription drugs, the Court labeled as remote the possibility that judges would fail to protect attempts at unwarranted disclosures for evidentiary purposes. *Id.* at 601-602. The trial judge fulfilled the Supreme Court's expectations.

[12] For the same reasons, rejection of defendants' discovery attempts did not deny them due process of law.

We need not reach the question whether affected women who bring an action have a constitutional right to have their identities (and the fact that they had been pregnant and decided to obtain an abortion) kept in confidence in an injunction case like this. If this were an action seeking relief for harm done to an individual plaintiff or to a class of plaintiffs, the defendants' entitlement to information about those individuals would be quite different from their entitlement here. See *Western Elec. Co.* v. *Stern*, 544 F.2d 1196, 1199 (3d Cir. 1976); *National Org. for Women* v. *Sperry Rand Corp.*, 88 F.R.D. 272, 274-275 (D. Conn. 1980).

[13] The fact that the Attorney General was given standing to represent the public interest in bringing a suit shows a desire to encourage compliance with the law in situations where individual plaintiffs are unlikely to come forward because of a perceived stigma associated with the activity of seeking abortion services, because the duration of their involvement with the issue is transient, or because they cannot

4. The defendants claim that a portion of the amended permanent injunction is constitutionally impermissible.[14] Their argument is directed to clause (c) of the injunction which was not included in the preliminary injunction that this court considered in *Planned Parenthood League of Mass., Inc.* v. *Operation Rescue*, 406 Mass. 701 (1990).[15] Clause (c) enjoins the defendants, individually and collectively, from "directing, instructing, conspiring with and/or [*sic*] aiding or abetting directly or indirectly any person, persons, groups or organizations who engage in any of the acts described in paragraphs (a) and (b) above."[16]

The defendants focus their argument on the words "aiding or abetting directly or indirectly any person . . . [or] groups . . . who engage in any of the acts described." They claim that the injunction improperly refers to "aiding *or* abetting" (emphasis added) rather than conjunctively to both; that the prohibition of "indirect" aiding or abetting is a "very vague notion"; that the reference to aiding or abetting "groups" invites guilt by association; and that the prohibition against aiding or

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anticipate that this is an issue that will affect them in the future. Respecting the judge's decision to proceed without attempting to compel an appearance by patients as witnesses and allowing the injunction to stand is consistent with the outline of the MCRA and the Attorney General's role under it.

[14] We consider this point even though the defendants did not raise it in the trial court. The defendants do not dispute the plaintiffs' assertion that the defendants had opportunities to raise this challenge and did not do so.

[15] In the earlier case, the defendants argued unsuccessfully that the preliminary injunction violated their First Amendment rights because it (a) was impermissibly vague, (b) was overbroad because it prohibits constitutionally protected conduct, and (c) imposed an improper prior restraint on the defendants' right of free expression. *Planned Parenthood League of Mass., Inc.* v. *Operation Rescue*, *supra* at 714-717.

[16] Clause (a) permanently enjoined trespassing, blocking, or obstructing access to or from any facility in the Commonwealth which provides abortion counseling or services. Clause (b) permanently enjoined physical restraining or obstructing or committing acts of force or violence against persons entering, leaving, or working at or seeking services from any such facility.

abetting blockading,[17] rather than against criminal activity itself, is vague.[18]

The complete answer to the defendants' claims is that clause (c), using the words "aiding or abetting," is modeled on traditional concepts of accessory liability which limit the scope of the injunction and identify those acts that are prohibited. See *Kyte* v. *Philip Morris Inc.*, 408 Mass. 162, 168-169 (1990) (aiding and abetting require proof that the defendant knew of its substantial, supporting role in an unlawful enterprise). *Commonwealth* v. *Sylvester*, 400 Mass. 334, 339 & n.6 (1987) (acquiescence and presence alone not enough). Any violator of the prohibition against aiding or abetting in clause (c) must share the mental state of the principal violator. See *Commonwealth* v. *Richards*, 363 Mass. 299, 307-308 (1973). Cf. *Commonwealth* v. *Adams*, 416 Mass. 558, 565 (1993). Because intentional conduct is the measure of a violation of the MCRA (see *Deas* v. *Dempsey*, 403 Mass. 468, 471 [1988]; *Redgrave* v. *Boston Symphony Orchestra, Inc.*, 399 Mass. 93, 99 [1987]) and of clauses (a) and (b) of the injunction, proof of a violation of the "aiding or abetting" prohibition of clause (c) will require a showing of a defendant's intention to assist intentional conduct violative of clause (a) or clause (b), or both.

5. With the exception that the judgment should be vacated as to Rebecca Roe and the action dismissed as to her (see note 6 above), the amended permanent injunction, entered on October 28, 1991, is affirmed as applied to the defendants.

So ordered.

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[17] The injunction does not use the word "blockading."

[18] The defendants cite for support two loyalty oath cases, in which the phrase "aid or abet" does not appear. See *Baggett* v. *Bullitt*, 377 U.S. 360 (1964); *Cramp* v. *Board of Pub. Instruction of Orange County*, 368 U.S. 278 (1961). They also rely on *NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886 (1982), briefly suggesting that clause (c) presents a First Amendment overbreadth problem. It is in this latter respect alone that the defendants may assert the rights of others who might be affected by the injunction. See *Commonwealth* v. *Bohmer*, 374 Mass. 368, 371 n.6 (1978).

O'CONNOR, J. (dissenting, with whom NOLAN and LYNCH, JJ., join). The defendant organizations and individuals and "their officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order, either orally or by receipt of a copy thereof, are permanently enjoined, individually and collectively, from:

> "a. trespassing on, blocking or in any way obstructing access (either ingress or egress) to any facility in the Commonwealth which provides abortion counselling or services; or
>
> "b. physically restraining or obstructing or committing any acts of force or violence against persons entering, leaving, working at or seeking to obtain services from any facility in the Commonwealth which provides abortion counselling or services; or
>
> "c. directing, instructing, conspiring with and/or aiding or abetting directly or indirectly any person, persons, groups or organizations who engage in any of the acts described in paragraphs (a) and (b) above."

In my view, clauses (a) and (c) are constitutionally overbroad and should be vacated. In my dissent in *Planned Parenthood League of Massachusetts, Inc.* v. *Operation Rescue*, 406 Mass. 701 (1990) (*Planned Parenthood I*), I presented my argument that clause (a) of the preliminary injunction at issue in that case was overbroad. My view has not changed. Therefore, because clause (a) of the permanent injunction at issue in this case is substantially the same as clause (a) of the preliminary injunction at issue in *Planned Parenthood I*, I dissent in the present case.

No worthwhile purpose would be served by a full repetition here of the views expressed in the earlier dissent. Essentially, my position was and is that an injunction against the defendants and others "in active concert or participation with them" from "trespassing on, blocking, or in *any way obstructing* access" (emphasis added) to abortion facilities, is overbroad because "reasonable persons, wishing to express their views about the morality of abortion and whether abortion should be legal, [cannot] be confident that they would not violate that injunction by joining others on public ways adjacent to a clinic to picket, pray, chant, and exhort others to accept their viewpoint. The injunction expressly forbids not only trespassing and blocking, but also 'obstructing' ingress or egress in any way. It cannot reasonably be said that the prohibition against obstruction [in any way] adds nothing to the prohibition against trespassing and blocking[, both of which terms connote physical interference]. Such a result can be reached only by reading words out of the injunction. The injunction must fairly be construed as prohibiting the hindrance of access to clinics by nonphysical confrontation on public ways as well as the physical block[ing] of entranceways." *Planned Parenthood I, supra* at 721-722 (O'Connor, J., dissenting). Therefore, clause (a) and clause (c), which incorporates clause (a), impermissibly chill, even if they are not intended to prohibit, conduct protected by the First Amendment to the United States Constitution.

APPENDIX B

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 89-2487-F

PLANNED PARENTHOOD LEAGUE
OF MASSACHUSETTS, INC., ET AL.,
Plaintiffs,
BARRY ADLER, D/B/A GYNECARE,
Plaintiff-Intervenor,
and
COMMONWEALTH OF MASSACHUSETTS
BY ITS ATTORNEY GENERAL,
Plaintiff-Intervenor,

v.

OPERATION RESCUE, ET AL.,
Defendants.

AMENDED JUDGMENT

This action came on before the Court, Peter M. Lauriat, J., presiding, and the issues having been duly heard, and findings of fact and rulings of law having been duly rendered, it is hereby **ORDERED**, **ADJUDGED** and **DECREED** that:

1. The defendants' motions for a directed finding in their favor, filed at the conclusion of the plaintiffs' case-in-chief and renewed at the conclusion of the defendants' case, are each **DENIED**;

2. Judgment shall enter in favor of plaintiffs Planned Parenthood of Massachusetts, Inc., Preterm, Inc., Repro Associates, Inc., Crittenton Hastings House, Stanton P. Goldstein, M.D., Rebecca Roe, plaintiff-intervenor Barry Adler, d/b/a Gynecare, and plaintiff-intervenor Commonwealth of Massachusetts against the defendants Operation Rescue: Boston, Pro Life Action Network of Arlington, Barbara Bell, Timothy Biggins, Kevin Blake, Timothy Brigham, Sean Brogan, Rachel Cann, Shirley Clifton, Sean Corrigan, William Cotter, Claire Croghan, Robert Delery, Denise Duda, James Dudley, Robert Filos, Darroline Firlit, Francis Haggerty, Bruce Hendon, Lawrence Howe, Mary Kelliher, Michelle LaPlume, Joseph Manning, Peter Marleau, Jean Marshall, John D. McCarthy, Jr., Richard McCarthy, Anne McNamara, Bruce Murch, Adeline Murray, James Myette, Mortimer O'Shea, Andrew Olsson, Brian Phaneuf, Fred Pulsifer, Philip St. Jean, Russell Saulnier, Andrew Singer, Jr., Robert Souza and Catherine Wommack on the plaintiffs' Joint Amended Complaint for violations of the Massachusetts Civil Rights Act, General Laws c. 12, §§ 11H-J;

3. The defendants Operation Rescue: Boston, Pro Life Action Network of Arlington, Barbara Bell, Timothy Biggins, Kevin Blake, Timothy Brigham, Sean Brogan, Rachel Cann, Shirley Clifton, Sean Corrigan, William Cotter, Claire Croghan, Robert Delery, Denise Duda, James Dudley, Robert Filos, Darroline Firlit, Francis Haggerty, Bruce Hendon, Lawrence Howe, Mary Kelliher, Michelle LaPlume, Joseph Manning, Peter Marleau, Jean Marshall, John D. McCarthy, Jr., Richard McCarthy, Anne McNamara, Bruce Murch, Adeline Murray, James Myette, Mortimer O'Shea, Andrew Olsson, Brian Phaneuf, Fred Pulsifer, Philip St. Jean, Russell Saulnier, Andrew Singer, Jr., Robert Souza and Catherine Wommack, their officers, agents, servants, employees and those persons in

active concert or participation with them who receive actual notice of this paragraph of this Order, either orally or by receipt of a copy thereof, are permanently enjoined, individually and collectively, from:

a. trespassing on, blocking or in any way obstructing access (either ingress or egress) to any facility in the Commonwealth which provides abortion counselling or services; or

b. physically restraining or obstructing or committing any acts of force or violence against persons entering, leaving, working at or seeking to obtain services from any facility in the Commonwealth which provides abortion counselling or services; or

c. directing, instructing, conspiring with and/or aiding or abetting directly or indirectly any person, persons, groups or organizations who engage in any of the acts described in paragraphs (a) and (b) above.

Pursuant to General Laws, c. 12, §§ 11H and 11J, **VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE;**

4. The defendants Robert Delery and Barbara Bell, their agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order, are permanently enjoined from:

a. representing to anyone, orally or in writing, that he or she is acting as an escort for, or is in any way affiliated with the Planned Parenthood Clinic of Greater Boston, located at 1031 Beacon Street, Brookline, Massachusetts; and

b. wearing an apron, pinney or other identification signifying that he or she is an escort for, or is in any way affiliated with the Planned Parenthood Clinic of Greater Boston, located at 1031 Beacon Street, Brookline, Massachusetts.

5. The plaintiffs' Joint Amended Complaint against defendant George Duda is **DISMISSED**.

6. The claims of the plaintiffs League of Women Voters of Massachusetts, Inc., Massachusetts National Organization for Women, Mass. Choice and Religious Coalition for Abortion Rights are **DISMISSED**; and

7. The plaintiffs' claims against the defendants Constance Smith, Patricia Anthony, Paul Baldassari, Joseph Beard, Gregory Benoit, Kenneth Berthiaume, Peter F. Biggins, Fran Carl, William Clark, Paul Colbath, Anthony Doherty, Leslie Ducott, Timothy Enos, Kenneth Evans, Harriet Fremont-Smith, Warren Goddard, Timothy Hicks, William Kenney, Eric Knowles, Sharon Lach, Albert Lanzo, Patricia Leonard, Edward Long, Sandra Logue, Frank Macey, Russell Marinich, Mario Martin, James McClymonds, Judith Morse, Philip O'Connell, Adeline Parisi, Frances Pizzelli, Jean Proia, Donald Putnam, Richard Regan, Scott Richardson, John Riordan, Mark Smith, Irma Sparling, Michael Trainor, and Kevin Turenne are **DISMISSED WITHOUT PREJUDICE**.

/s/

Peter M. Lauriat
Justice of the Superior Court

DATED: October 28, 1991.

APPENDIX C

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 89-2487-F

PLANNED PARENTHOOD LEAGUE
OF MASSACHUSETTS, INC., ET AL.,
Plaintiffs,
BARRY ADLER, D/B/A GYNECARE,
Plaintiff-Intervenor,
and
COMMONWEALTH OF MASSACHUSETTS
BY ITS ATTORNEY GENERAL,
Plaintiff-Intervenor,

v.

OPERATION RESCUE, ET AL.,
Defendants.

AMENDED PERMANENT JUDGMENT

The defendants Operation Rescue: Boston, Pro Life Action Network of Arlington, Barbara Bell, Timothy Biggins, Kevin Blake, Timothy Brigham, Sean Brogan, Rachel Cann, Shirley Clifton, Sean Corrigan, William Cotter, Claire Croghan, Robert Delery, Denise Duda, James Dudley, Robert Filos, Darroline Firlit, Francis Haggerty, Bruce Hendon, Lawrence Howe, Mary Kelliher, Michelle LaPlume, Joseph Manning, Peter Marleau, Jean Marshall, John D. McCarthy, Jr., Richard McCarthy, Anne McNamara, Bruce Murch, Adeline Murray, James Myette, Mortimer O'Shea, Andrew Olsson, Brian

Phaneuf, Fred Pulsifer, Philip St. Jean, Russell Saulnier, Andrew Singer, Jr., Robert Souza and Catherine Wommack, their officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order, either orally or by receipt of a copy thereof, are permanently enjoined, individually and collectively, from:

a. trespassing on, blocking or in any way obstructing access (either ingress or egress) to any facility in the Commonwealth which provides abortion counselling or services; or

b. physically restraining or obstructing or committing any acts of force or violence against persons entering, leaving, working at or seeking to obtain services from any facility in the Commonwealth which provides abortion counselling or services; or

c. directing, instructing, conspiring with and/or aiding or abetting directly or indirectly any person, persons, groups or organizations who engage in any of the acts described in paragraphs (a) and (b) above.

Pursuant to General Laws c. 12, §§ 11H and 11J, **VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

/s/

Peter M. Lauriat
Justice of the Superior Court

Dated: October 28, 1991.